

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH ANN ELDRIDGE,

Plaintiff-Appellant,

UNPUBLISHED
May 20, 2003

v

WILLIAM ROBERT ELDRIDGE,

Defendant-Appellee.

No. 237680
Wayne Circuit Court
LC No. 95-509557-DM

Before: Markey, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Plaintiff and defendant were married on June 30, 1973. On April 4, 1995, plaintiff filed for divorce. On July 22, 1996, the parties orally placed their settlement agreement on the record, which was incorporated into the judgment of divorce on July 29, 1996. Four months later, plaintiff filed a motion for entry of a written version of the consent judgment that was earlier placed on the record because defendant challenged a provision in the settlement, contending that payments for the amount of \$3 million were “alimony” and not a property settlement. On December 13, 1996, the parties agreed that the payments would be taxable to plaintiff and tax deductible to defendant, and the consent judgment of divorce was entered in the record the same day. In July 2000, defendant moved to modify or terminate those payments because the IRS had assessed taxes against defendant, not plaintiff, contrary to the agreement. The trial court found that plaintiff had received a windfall as a result of the change in the tax treatment and entered its opinion and order, in which it devised a formula for reimbursement to defendant. We granted leave to appeal and now affirm.

Plaintiff’s arguments on appeal are grounded on the claim that the trial court modified the agreement and that it lacked the authority to do so. In their essence, plaintiff’s arguments challenge the trial court’s authority to determine the intent of the parties as it related to the disputed property settlement provision in the consent judgment of divorce.

In a divorce action, we first review the trial court’s findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous, if after review of the record, this Court is left with a definite and firm conviction that a mistake was made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). If the trial court’s findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 440 Mich 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction

that the division was inequitable. *Id.*; *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). This Court reviews a trial court's decision to grant relief from an earlier judgment for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

The issue on appeal requires this Court to first determine whether the trial court properly construed the intent of the parties as expressed in the document. A settlement agreement constitutes a contract and is governed by the legal principles applicable to the construction of contracts. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999). Contract language is construed according to its plain and ordinary meaning. *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). When contract language is clear and unambiguous, the parties' intent must be ascertained from the contract. *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998). The provision at issue is as follows:

IT IS FURTHER ORDERED AND ADJUDGED that [defendant] shall pay [plaintiff] THREE MILLION DOLLARS (\$3,000,000.00) in alimony payments over a 12-year period, or TWO HUNDRED, FIFTY THOUSAND DOLLARS (\$250,000.00) per year for 12 years. These annual alimony payments of \$250,000.00 will commence on June 1, 1997 and continue each June 1st for the following 12 years. *Said alimony payments shall be taxable to [plaintiff] and tax deductible [defendant].* [Emphasis added.]

Here, the trial court found that because the IRS had determined that the above payments were alimony in gross taxable to defendant pursuant to the Internal Revenue Code, an ambiguity or inconsistency existed between the language of the first and second sentences. The language of the first sentence is clear and unambiguous: defendant was obligated to pay plaintiff \$3 million in twelve installments. However, we conclude that the plain language of second sentence, "[s]aid alimony payments shall be taxable to [plaintiff] and tax deductible [defendant]," is questionable. In its literal sense, the sentence instructs the IRS as to the particular tax treatment that the parties intended. As evident in this case, however, the parties were without authority to determine tax treatment under the Internal Revenue Code. Nonetheless, the sentence may also be read to indicate the parties agreement that plaintiff bear the tax liability against the payments.

A review of the entire consent judgment reveals that although the parties assigned tax and other financial liabilities in clear and unambiguous terms in other areas of their settlement, the language of the sentence at dispute inexplicably does not. Further, nothing in the document indicates that defendant agreed to assume the risk of unfavorable tax treatment.

A review of the trial court proceedings before the entry of the instant consent judgment of divorce shows that the parties had orally placed their negotiated settlement on the record that was subsequently incorporated into the judgment of divorce. However, four months later, plaintiff filed a motion for entry of judgment, asserting that defendant disputed certain provisions in the agreement. Although poorly and loosely worded, a provision in the proposed consent judgment of divorce that plaintiff attached to her motion indicated that defendant was to pay plaintiff a \$9 million property settlement, \$6 million of which was to be paid in a lump sum upon the sale of defendant's businesses, while the remaining \$3 million was to be paid in twelve annual installments at \$250,000 each. Defendant responded to plaintiff's motion by contending that the payments of the \$3 million constituted "alimony," not part of the negotiated property settlement.

The transcript of the hearing on plaintiff's motion for entry of the consent judgment of divorce on December 13, 1996, shows that plaintiff knew that defendant did not want to pay taxes on the \$250,000 installment payments. The parties informed the trial court that they did not discuss this issue at their settlement negotiations. Plaintiff's counsel explained that plaintiff would be taxed for "alimony" but that defendant would pay taxes on the property settlement. It is clear that when the parties broke from the proceedings to negotiate the matter, plaintiff was fully aware of defendant's intention to avoid the tax assessments against the annual installments. When the parties returned on the record, plaintiff's counsel merely announced that the parties decided to label the payments "alimony." Later that day, plaintiff's counsel submitted the revised settlement document to the trial court for entry. A comparison of the proposed judgment of divorce that plaintiff had initially attempted to enter and the final judgment of divorce that was actually entered, shows that the location of the disputed provision was changed within the document, that the terms "property settlement" were changed to "alimony," and that the disputed sentence providing that the installments were taxable to plaintiff and tax deductible to defendant, was inserted. Thus, while the language of the second sentence does not match the language of other provisions that assigned tax and other financial liabilities, the circumstances in this case show that the disputed provision was not drafted until after the original document was authored and was inserted at a later date. Further, plaintiff's argument that the parties agreed that defendant assume the risk of unfavorable tax treatment is not supported by the record. Instead, the consent judgment of divorce and the circumstances of its entry show that plaintiff agreed to bear the tax liability for the \$3 million in installment payments. Therefore, the trial court properly found that it was the parties' intent that plaintiff receive after-tax payments on those annual installments.

Plaintiff contends that the trial court had no power to modify the consent judgment of divorce by imposing an order for reimbursement. Property divisions reached by the consent of the parties, and finalized in writing or on the record, cannot be modified by the court. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). The court is bound to uphold such settlements and cannot set them aside absent fraud, duress, mutual mistake or severe stress. *Id.* However, as with all final judgments, a party may seek relief from the property settlement provisions of the divorce judgment under MCR 2.612(C). *Tomblinson v Tomblinson*, 183 Mich App 589, 594; 455 NW2d 346 (1990). This Court can modify judgments to rectify mistakes, interpret ambiguities, and alleviate inequities. *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993). In pertinent part, MCR 2.612(C) provides:

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

* * *

(e) The judgments has been satisfied, released, or discharged . . . or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

In *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999), this Court noted that for relief to be granted under MCR 2.612(C)(1)(f), three requirements must be met: “(1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice.” Arguably, the facts in this case may fall under (a) or (e). However, this Court also held that “a trial court may properly grant relief from a judgment under MCR 2.612(C)(1)(f), even where one or more of the bases for setting aside a judgment under subsections a through e are present, when additional factors exist that persuade the court that injustice will result if the judgment is allowed to stand.” *Id.* at 481.

Here, the trial court found that the intent of the parties was frustrated when the IRS determined that the \$3 million settlement was not alimony, but a property settlement, or alimony-in-gross, that was taxable to defendant, not plaintiff. The trial court determined that as a result of the IRS tax treatment, plaintiff had received a windfall not contemplated in the consent judgment of divorce. The court found that this windfall changed the substantive rights of the parties: plaintiff received an extra sum of between \$840,000 to \$1.7 million that was not contemplated by the agreement. On appeal, plaintiff does not discuss or challenge the trial court’s finding that the IRS’s determination with respect to the tax treatment resulted in a windfall to her. In light of the circumstances surrounding the entry of the consent judgment of divorce as discussed above, we conclude that the trial court’s finding of a windfall was proper and comports with MCR 2.612(C)(1)(f). *Heugel, supra* at 237 Mich App 481.

The final question is whether plaintiff’s substantial rights were detrimentally affected. Here, after the trial court determined that the intent of the parties in their negotiated agreement was that plaintiff was entitled to a \$3 million property settlement but that she was obligated to pay the taxes applicable; consequently, the trial court held that plaintiff was obligated to reimburse defendant for the taxes that were assessed against him for the \$3 million. The court expressly recognized that defendant’s overall taxes were greater than plaintiff’s. Accordingly, the court devised a formula for calculating the required reimbursement.

On appeal, plaintiff has not provided this Court with the documents that the trial court used in reaching this formula. Because plaintiff does not challenge this formula, we conclude that it properly calculates the amount of reimbursement that plaintiff should have paid in taxes. Therefore, plaintiff’s substantial rights have not been detrimentally affected by the imposition of the reimbursement order. Further, in light of the above, we conclude that the trial court did not modify the disputed provision in the judgment; the court merely effectuated the intent of the parties in a manner that preserved the rights of the parties under the agreement.

It should be noted here that plaintiff argues for the first time on appeal that she agreed to pay taxes on the property settlement because she knew that the IRS would not hold her accountable for the taxes. In other words, plaintiff states that when she agreed to pay the taxes, she was “risking almost nothing” and “felt no need to demand any significant, or even insignificant, concession in return.” Plaintiff asserts that defendant should have protected his own rights by expressly incorporating into the consent judgment of divorce the provisions of 26 USC 71 of the Internal Revenue Code. Although plaintiff does not contend that the code applies

to the parties in this case, it is difficult to assume that defendant was aware of it at the time of the negotiations. Given the fact that the record is clear with respect to defendant's insistence that he not be liable for taxes, and given the substantial amount of taxes in question, we cannot conclude that defendant would not have been interested in the IRS's tax determination, and that he would choose not to address the consequences of that determination in the consent judgment of divorce. Plaintiff should not be allowed to benefit when she agreed to defendant's clear intentions.

Plaintiff's remaining claims on appeal are grounded on the assertion that the trial court modified the disputed provision. As previously discussed, the trial court did not modify the disputed provision in the consent judgment of divorce. Therefore, we do not address the remaining claims.

We affirm.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra